

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-5011

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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In the Matter

of

REA HOLDING CORPORATION,
THE EXPRESS COMPANY, INC.,
REA EXPRESS, INC., f/k/a
Railway Express Agency, Inc.,
REXCO SUPPLY CORPORATION,

Docket Nos. 77-5011
and 77-5012

Bankrupts,

BROTHERHOOD OF RAILWAY, AIRLINE,
AND STEAMSHIP CLERKS, FREIGHT
HANDLERS, EXPRESS AND STATION
EMPLOYES,

and

WISEHART, FRIOU & KOCH,

Appellants.

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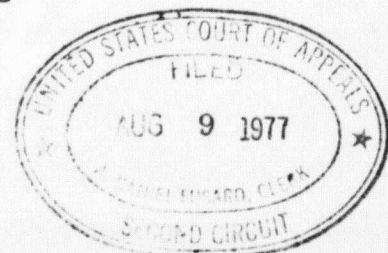
APPENDIX OF APPELLANT,
BROTHERHOOD OF RAILWAY, AIRLINE AND
STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYES

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

In the Matter
of

REA EXPRESS

No. 75 B 253

U. S. Courthouse
Foley Square
New York, New York

February 18, 1977
10:00 o'clock a.m.

Hrg re: 7th sale of real estate; hrg. to
consider offer (Interway Corp.); Hrg re:
interim allowances

B E F O R E :

HON. JOHN J. GALGAY,

Bankruptcy Judge

RAYVID REPORTING SERVICE
CERTIFIED STENOGRAPHIC REPORTERS
150 NASSAU STREET
NEW YORK, N. Y. 10038

CORTLANDT 7-3877
3878

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will mark it submitted. You may prepare an order.

MR. KAHN: I would like to add to what Mr. Angel has stated.

THE JUDGE: Leave the amount blank.

MR. KAHN: I would like to add to what Mr. Angel has stated by stating for the record that the trustee has examined the request for allowance of all of the counsel mentioned by Mr. Angel who worked on this matter and the trustee supports all of the applications.

THE JUDGE: Thank you.

MR. KAHN: The next application for allowance is the application of the trustee, Mr. Sowerwine.

In support of that application, Your Honor, may I call Mr. Sowerwine to the witness stand?

THE JUDGE: Yes.

C. O R V I S S O W E R W I N E, having been first duly sworn, testified as follows:

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EXAMINATION BY MR. KAHN:

Q Please state your name and address.

A C. Orvis Sowerwine, 10 Dorchester Road,
Summit, New Jersey.

Q Are you the trustee in the cases of
REA Holding Corp., Inc.; REA Express, Inc.; Rexco
Supply, Inc. and the Express Company, Inc.?

A I am.

Q Have you made an application for
an interim allowance dated February 10, 1977?

A Yes.

Q Is that application for an interim
allowance in all of the cases?

A Yes. No. Excuse me.

Q The reason for the question is
because the caption is only REA Express, Inc. Do
you intend to ask for an interim allowance in any
of the other cases?

A No.

Q The allowance that you are asking
for is the allowance for all of the cases; is that
correct?

A Yes.

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Q Do you have a copy of the application before you?

A Yes, I do.

Q Would you turn to the page following page 4. Is that your signature?

A Yes, it is.

Q Did you examine this application prior to signing it?

A Yes.

Q Did you read all of the statements?

A Yes.

Q Are they all true to the best of your knowledge, information and belief?

A Yes, they are.

Q Approximately what is on deposit in the bankrupt's account at the moment?

A I believe it is around seven and a half million dollars today.

Q Do you have any general idea of your gross receipts to date and your rough disbursements to date?

A The gross receipts through the end of the

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3 year are given as \$29,800,000 in the schedule
4 prepared by Price, Waterhouse. I have not checked
5 as to what they have been since that date.

6 Q They are approximately \$29 million
7 so that the disbursements would have been around
8 \$22 million?

9 A I think that is right.

10 Q Was a substantial amount of that
11 income and disbursements incurred in connection
12 with the Rexco operation?

13 A Yes, quite a substantial portion.

14 Q With respect to that Rexco opera-
15 tion it was closed, I understand, after the Inter-
16 state Commerce Commission had entered a certain
17 ruling; is that correct?

18 A Yes.

19 Q Would you make an estimate of the
20 profitability of that operation until the time that
21 it was closed?

22 A In the last two or three months of opera-
23 tion it was creating a net profit of approximately
24 \$140,000 a month.

25 Q You state on page 2 of your affidavit

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3 that the approximate net profit to the estate
4 from Rexco from the inception of the bankruptcy
5 to and including November '76 was \$975,000?

6 A That's correct.

7 Q Mr. Sowerwine, approximately what
8 percentage of your time have you devoted to this
9 matter from June 1, 1976 to and including December
10 31, 1976?

11 A I would guess it runs about two-thirds of
12 my time.

13 Q Is it true that you devoted ap-
14 proximately 515 1/4 hours; is that correct, based
15 upon your time records?

16 A Yes.

17 Q Are you employed by Shearson,
18 Hayden, Stone, Inc.?

19 A Yes and no. I am employed without com-
20 pensation.

21 Q When did you give up that compen-
22 sation?

23 A May 14th was the last I was paid of 1976.

24 Q Why did that event occur?

25 A I spent so much time on REA that I felt

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3 that it was not proper for me to continue to take
4 a salary because I was not earning it. I
5 had been on half salary up to that point that I
6 became trustee.

7 Q So that your aggregate income
8 from your earnings in the period of time for which
9 you are requesting an allowance would be the period
10 of time that you would be compensated for as trustee?

11 A Yes; but I have still been the modest
12 director of other concerns. That is the only
13 income that I have had.

14 THE JUDGE: What would be the
15 statutory allowance for the trustee?

16 MR. KAHN: We calculated the
17 last time and the calculations for a trustee
18 operating a business at that time was
19 \$278,000 and without operating precisely
20 one half of that.

21 A The figure is \$596,000 on the 2%

22 THE JUDGE: He has been paid \$50,000?

23 MR. KAHN: Yes, and asking for an
24 additional \$50,000 with this application.
25 I have no further questions.

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3 MR. ANGEL: Your Honor, first
4 the trustee testified that he has ap-
5 proximately seven and a half million
6 dollars on deposit.

7 The trustee doesn't know that
8 we closed title to the Hartford property
9 and have netted for the estate \$300,000
10 so that the total is closer to \$8 million
11 at the present time.

12 Secondly, I want the record to
13 indicate that notice on the hearings,
14 other than the real estate hearings, to
15 wit, the Interway compromise, the special
16 counsel allowance for Mr. Wright and the
17 Wolf, Block firm and the Wisehart firm
18 and the application for counsel to the
19 trustee, which are next on the agenda,
20 were all subject to a notice both published
21 and in written form sent to all of the
22 creditors at the exact same time that
23 the notice went out for the sale of the
24 real estate so that exhibit would apply
25 to this entire hearing today and not just

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the sale of real estate.

THE JUDGE: Does anyone want to inquire of Mr. Sowerwine?

(No response.)

THE JUDGE: You may sit down. Mr. Friou.

MR. FRIOU: I didn't want to rush the court. Do I understand that we are enjoined from asking any questions of the trustee at this time?

MR. KAHN: I very definitely take the position that they are enjoined and they are not however, the firm is not enjoined, through representation of other counsel from examining Mr. Sowerwine and certainly Mr. Fleming representing the B.R.A.C. members is also not enjoined.

Mr. Friou and Mr. Wischart individually and their associates, to whatever extent there are associates in the firm, would be enjoined.

That is the position of the trustee. I should point out in that connection, Your

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3 Honor, two items; the temporary restraining
4 order which I have in my hand I would like
5 to read a few words from it.

6 "It is ordered that pending a
7 determination of such motion --" such
8 motion meaning the motion to disqualify
9 that firm, "the Wisehart firm -- is re-
10 strained from representing any clients
11 or interests adverse to the interests of
12 the trustee of the bankrupt estates other
13 than", and then there are some exceptions.

14 There is no exception with res-
15 pect to this hearing. Subsequent to the
16 entry of this order, Your Honor, on the
17 application for a preliminary injunction by
18 the trustee a stipulation was entered into
19 on the record dated December 30, 1976.

20 Mr. Wisehart prepared a stipulation
21 representing what he understood to be the
22 meaning of that court hearing and signed
23 it.

24 I would like to offer it at this
25 time. Subsequent to that time, Your Honor,

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3 on January 25, 1977 Mr. Fricou wrote a
4 letter to the court in which he says,
5 among other things "In doing so -- and
6 in doing so is the request for an ex-
7 tension of time -- I would wish to point
8 out that the temporary restraining order
9 remains in effect in any event by stipu-
10 lation on the record."

11 If you wish I will have it marked.

12 THE JUDGE: Let Mr. Fricou look at
13 it. Do you object to that being admitted
14 in evidence?

15 MR. FRICOU: Yes, Your Honor.

16 THE JUDGE: State the grounds
17 of your objection.

18 MR. FRICOU: The conference on
19 December 30, Your Honor, took a stipula-
20 tion in the record and instructed counsel,
21 Mr. Wischart and Mr. Oppenheim to enter
22 into a written stipulation.

23 Mr. Wischart immediately prepared
24 what he understood to be a stipulation
25 and sent it --

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3 THE JUDGE: Continue your remarks.

4 MR. FRIOU: He is making remarks
5 and shaking his head. I would like to
6 know, since I was not there and that
7 obviously prejudiced your reaction to what
8 I am saying --

9 THE JUDGE: You think I am very
10 easily prejudiced, but I am not. Conclude
11 your statement.

12 MR. FRIOU: This stipulation was
13 sent to Whitman & Ransom and returned un-
14 signed. We have a letter from them saying
15 that the --

16 THE JUDGE: Let's put that in as
17 an exhibit and let it go at that.

18 MR. FRIOU: That is fine.

19 MR. KAHN: I would like to include
20 the acknowledgement by Mr. Friou. Is that
21 a copy of the letter that you wrote to the
22 court?

23 MR. FRIOU: Yes.

24 MR. KAHN: That should be included
25 in the hearing.

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THE JUDGE: Let the transcript of the hearing in my chambers and the rest be entered in evidence.

MR. FRIOU: At the time the letter was written the trustee's counsel was asking the District Court in two separate motions which were misfiled that the temporary restraining order of December 26 was moot contrary to the stipulation.

We, Your Honor, it is by your ruling that we are enjoined on behalf of ourselves, individually, and as attorneys and as a law firm from asking any questions of this trustee at this time.

MR. KAHN: That is not what I said. They are enjoined from being represented by other counsel. They are enjoined as attorneys appearing in this court.

The firm of Wisehart, Friou and Koch may be represented in this court by any other attorneys.

THE JUDGE: Do you have counsel

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3 that you would like to use?

4 MR. FRICU: We take the position
5 that the trustee's position with respect
6 to my firm is a denial of due process of
7 law and denies us an opportunity to be
8 properly represented before this court.

9 THE JUDGE: I will adjourn this
10 hearing to give you an opportunity to
11 have counsel examine the trustee if you
12 care to. Is that your desire?

13 MR. FRICU: No, sir. It is the
14 desire to examine the trustee myself.

15 THE JUDGE: Under the terms of
16 the restraining order I don't think that
17 you or Mr. Wisehart or your law firm can
18 inquire of the trustee.

19 I invite you to take an adjourn-
20 ment, and have counsel, and inquire through
21 that counsel of the trustee.

22 MR. FRICU: There are substantial
23 discrepancies with respect to the trustee's
24 allowance --

25 MR. KAHN: I move to strike. That

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is contemptuous of the court.

MR. FRICU: There are statements relating to grave and fundamental issues in the Bankruptcy Court which are inconsistent with respect to the --

THE JUDGE: My ruling --

MR. FRICU: Now pending before Your Honor, against my firm --

THE JUDGE: My ruling firms --

MR. FLEMING: I was mentioned as being one who could question the trustee. I have not seen the trustee's application.

I learned about this about three days ago and we are submitting applications in opposition to the attorney's fees and not necessarily to his fees.

I will file it today as far as the attorney's fees go. From what is going on, and the record that has been made, and from the questions that I think are still, at least open as far as a conflict of interests with respect to the interest of the parties, it seems to me the court

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1 might be well advised, and I say this as
2 a friend of the court and also as attorney
3 for the union to delay such a hearing
4 until those issues are determined.
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7 There has to be a -- and especially
8 the members of the union who have been
9 watching this action all day has to be
10 some doubt within their minds as to what
11 is going on.

12 I think the court, the lawyers
13 and the trustees and all persons in-
14 volved would be much better served if this
15 hearing was held in bed until these things
16 were settled by the other courts.

17 THE JUDGE: Do you want to inquire
18 of the trustee?

19 MR. FLEMING: I am not prepared to.

20 THE JUDGE: Do you want a brief
21 adjournment?

22 MR. KAHN: I was going to suggest
23 that and give Mr. Fleming a copy of the
24 application.

25 MR. FLEMING: I think to ask me to

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3 examine somebody on the application let's
4 say without being prepared for it, is like
5 going into a deposition without preparing
6 for it.

7 I would be like fishing.

8 THE JUDGE: I am talking about an
9 adjournment of a few days. You are aware
10 that when these matters are brought on
11 it is an expensive item when 40,000 people
12 have to be notified, the printing, et
13 cetera?

14 MR. FLEMING: I realize that.

15 THE JUDGE: I can adjourn the
16 hearing for a few days and possibly until
17 next week and have copies of the applica-
18 tion for allowance made available to you
19 and we can call Mr. Sowerwine back and I
20 will take whatever help I can get with
21 respect to he or anybody else receiving
22 a fair amount with respect to their
23 services.

24 I cannot delay these matters for-
25 ever.

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3 MR. FLEMING: If there was a week's
4 adjournment on the application these re-
5 straining orders that are outstanding
6 against Mr. Wisheart and his firm, would
7 they prevent them from discussing this
8 matter with me and for me discussing any
9 matter that I wish to with them seeking
10 any information that I don't have?

11 MR. KAHN: The cases have held
12 that they cannot disclose confidential
13 information. In fact, Your Honor, the
14 temporary restraining order expressly
15 provides that they cannot disclose con-
16 fidential information.

17 I am not saying that he cannot
18 talk to them. I am sure that he can.
19 Whether they disclose confidential inform-
20 ation or not would be something that
21 might ultimately be the basis of a con-
22 tempt proceeding.

23 THE JUDGE: Does that answer your
24 question?

25 MR. FRIOU: May I ask a question?

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THE JUDGE: Sit down for a moment, Mr. Friou.

MR. FLEMING: I would say this, Your Honor, that I would be because there is some doubt in my mind only because somebody raises the issues that there may be a question with respect to his application for me not to take any advantage of seeking information with respect to the legitimacy of the application for me to waive that right would be of no good to my client.

I will be speaking to Mr. Wisehart and Mr. Friou, but in those conversations I will tell them that they shall abide by any restraining order outstanding against them.

I am not going to get involved in a restraining order.

THE JUDGE: I am sure that they will recognize any attorney -- client privilege. They are to exercise that judgment.

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MR. FLEMING: May I ask Mr. Wisehart his attitude toward my suggestion?

MR. WISEHART: Your Honor, if Mr. Fleming's questions would be predicated upon information that we have or his ability to conduct an effective examination which would be based upon information that we have, then it seems to me that we should not proceed in any way with him until the pending appeal has been disposed of.

As a procedural matter it would strike me that is the way that it should go, that the matter could be adjourned until the appeal is decided.

THE JUDGE: I understand that it is to be argued before Judge Frankel next week.

MR. WISEHART: I thought it was to be argued on March 1. I don't know if he will be the judge on that date, but March 1 is the scheduled date.

THE JUDGE: Mr. Fleming, there are

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3 so many papers that have been filed,
4 affidavits by the Wischart firm, trans-
5 cripts of hearings involving the motion
6 to disqualify them, their cross motion
7 to disqualify me and the trustee I think
8 you would have abundant information within
9 those papers which are on file with the
10 court which I encourage you to read and
11 then you can speak to the Wischart firm
12 within the framework of the restraining
13 order.

14 I think you should prepare for
15 them so that you can examine Mr. Sowerwine
16 with respect to his application.

17 I will adjourn the matter for one
18 week to give you an opportunity to prepare.

19 MR. KAHN: One week from today I
20 will not be in New York. I will be out
21 of town on business. Can you make it on
22 another occasion where I might be present?

23 How about any day the following
24 week, or perhaps an earlier date? Needless
25 to say that Mr. Fleming can come to my

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1 office and examine my files.

2
3 MR. FLEMING: If you are thinking
4 of putting it over to the 28th or the first
5 week in March, wouldn't it be a bit more
6 appropo or be more effective to put it
7 over until Judge Frankel comes down with
8 a ruling?
9

10 THE JUDGE: I have no idea how
11 long he will take.

12 MR. FLEMING: If he knew that you
13 were waiting, maybe he would hurry up.

14 THE JUDGE: I can accommodate you
15 at 2:30 on Monday February 28th.

16 MR. FLEMING: Are you going to go
17 ahead with the application of the attorney's
18 fees?

19 MR. KAHN: I would oppose an adjourn-
20 ment since Mr. Reilly's firm has filed --

21 THE JUDGE: We will proceed with
22 the hearing on the allowances. If you
23 hear anything that would want to prompt
24 you to submit anything that you have sub-
25 mitted in addition I will give you time.

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3 MR. FRIOU: May I get a clarifi-
4 cation? Obviously we cannot talk to
5 Mr. Fleming under the conditions imposed
6 by the court in this record.

7 It is understood by the court
8 that will not be possible.

9 MR. FLEMING: That is not what you
10 said. It is our judgment as to what is
11 confidential or not. Will you talk to me?

12 MR. FRIOU: The problem -- we
13 want to be helpful to the unemployed workers
14 in this bankruptcy and would like to co-
15 operate with Mr. Fleming, but to have a
16 conversation where we have to take the
17 responsibility in being second guessed
18 as to what is --

19 THE JUDGE: You have filed such an
20 abundance of information which is a matter
21 of public record, and when he reads it
22 there may not be very much to talk to you
23 about.

24 The only burden that you have is
25 not to disclose any confidential information

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between the attorney and the client.

MR. FRICU: That is an impossible burden on the conversation.

THE JUDGE: I would like to have you and Mr. Wisehart consider employing counsel to represent you.

MR. WISEHART: I would like to know why.

THE JUDGE: I am going to get involved in any discussion with you. Sit down.

MR. WISEHART: We are entitled to Section 28 USC 455 as much as any other citizen in the U.S.A.

It guarantees the appearance of impartiality. I would like the record to note that we regard your comments as indicating a circumstance which is contrary to that provision.

THE JUDGE: The court will take a brief recess.

(Recess taken at this time.)

(Transcript dated 12/30/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(In Bankruptcy)

25

In the Matter
of

REA EXPRESS, INC.,

Bankrupt.

No. 75 B 253

Foley Square
New York, New York

February 28, 1977
2:30 p.m.

Adj. hearing on Interim Allowances

B E F O R E :

HON. JOHN J. GALGAY,

Bankruptcy Judge

RAYVID REPORTING SERVICE

CERTIFIED STENOGRAPHIC REPORTERS

150 NASSAU STREET

NEW YORK, N. Y. 10038

CORILANDT 7-3877
3878

REA

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3 Sourwine is supposed to be in bed.
4 Therefore, if Mr. Fleming wants to
5 question Mr. Surwine, we would consider
6 it a personal favor if he would take
7 him first so Mr. Sourwine can go back
8 home to bed.

9 MR. FLEMING: We will examine
10 Mr. Sourwine first.

11 THE JUDGE: You have been sworn
12 previously in these proceedings. Con-
13 sider yourself bound by that oath.

14 C. O R V I S S O W E R W I N E,
15 recalled as a witness, having previously
16 been duly sworn, resumed the stand, was
17 examined and testified further as
18 follows:

19 MR. FLEMING: Prior to direct-
20 ing a question to Mr. Sourwine, I would
21 like to have the record show that my
22 activities with regard to preparing for
23 this as they regard and relate to Mr.
24 Sourwine -- not Sourwine, but Mr.
25 Wieschard and Mr. Friou, because there

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3 have been restraining orders, there
4 have been many conversations and state-
5 ments in the court about privileged
6 communication, about conflict of inter-
7 est, about the content of court pro-
8 ceedings and what have you.

9 Following a hearing here the
10 beginning of last week after the holiday
11 I met with Mr. Robert Devlin, the
12 Vice President of BRAC, who has most
13 knowlege of REA matters.

14 He was having a public law
15 board meeting. It happened to be in
16 the same office building -- as a matter
17 of fact, the office where I think REA
18 is on the one section and Mr. Wisheart
19 has his office in another section.

20 They were in that section. That's
21 where I met him the next day.

22 The same time I spoke to Mr.
23 Friou and Mr. Wisheart, I would think
24 for something -- in Mr. Devlin's
25 presence, perhaps maybe a half hour;

REA

they were running in and out preparing for some of the motions they had.

I saw some papers of their's which are on file here for convenience sake.

Then my discussions were with Mr. Devlin and from there on I haven't seen anybody from Mr. Wisheart's firm that I can recall, nor have I had any telephonic conversations with them, writings with them.

After my initial meeting with Mr. Devlin, which I say took place in their office, I did write a letter of request to Mr. Sowerwine, in care of Whitman & Ransom, asking for certain information, documents to be prepared, submitted to me prior to this interrogation, which I thought was more or less going along with their very generous offer to show me "their files," which is pretty wide.

Mr. Don Wallace, with whom I have

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3 always had, I think, pretty pleasant
4 relations, call it shocking surprise in
5 the letter he wrote to me, copies to
6 you.

7 He wanted some assurance as to
8 whether or not that emanated from my
9 office or was it Mr. Wisehart's work.

10 Let the record show it's my
11 work.

12 I am not representing Wisehart
13 and Friou or Koch, only the union and
14 the union members.

15 I want no one to have any doubts
16 about that. If they do, they can ask
17 me questions about it.

18 THE JUDGE: All right.

19 Did you ask them for documents
20 and did you ask them to perform some
21 summary of those documents?

22 MR. FLEMING: No; I first sat
23 down waiting for Bob to -- he was about
24 20 feet away.

25 THE JUDGE: Being Mr. Devlin?

1 REA

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3 MR. FLEMING: Right.

4 Then they gave me the record

5 on appeal in one of their matters, which

6 had several documents in it which I

7 could look at.

8 I asked them -- I knew it would

9 be an awful mess coming down to the

10 Clerk's Office.

11 THE JUDGE: No; I was asking

12 whether you had asked Whitman & Ransom

13 to prepare any summary for you, which

14 would not have been included in the

15 spirit of my order.

16 Now, I thought they said they'd

17 make all documents available to you for

18 your examination.

19 MR. FLEMING: Right.

20 Well, I have a letter here which

21 I will read in. It really isn't too

22 long. This is dated February 23, '77.

23 It is hand carried from one of my

24 sections I believe to Mr. Sowerwine's

25 at Whitman & Ransom's office on

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February 23. It was addressed to Mr. Sowerwine.

THE JUDGE: What is the thrust of the letter?

MR. FLEMING: The thrust of the letter is three or four definite quite extensive requests for -- phone memoranda, diaries, papers relating to certain different issues.

THE JUDGE: All right, go ahead, read it into the record.

MR. FLEMING: This is a letter dated February 23, 1977 on the letterhead of Reilly, Fleming & Reilly, addressed to Orvis Sowerwine; it's care of Whitman & Ransom.

"In re REA Bankruptcy

Proceedings (Applications for allowances and fees)

"Dear Sirs:

"In accordance with your statement in Court on February 18, 1977 that you would make available to me any and all

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documents or files which may have any relevancy to the issues before the Court concerning applications for Trustee's interim allowance, I would ask you to be kind enough to have delivered to my office by 1:00 p.m. on Friday, February 25th the following documents:

"A- All writings including informal memoranda, diaries relative to the relationship between Mr. Sowerwine and the investment banking firm of Shearson, Hayden, Stone & Co. dealing with or relating to agreements and understandings between Mr. Sowerwine and the aforementioned investment banking firm pertaining to or bearing upon the compensation of Mr. Sowerwine, whether by salary, bonuses or otherwise beginning with February 18, 1975 and through the present date.

"A statement showing revenues received by or money owed to Shearson, Hayden, Stone & Co. from any railroad

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3 or airline involved in any way with the
4 pending bankruptcy proceeding or any
5 litigation involving any railroads or
6 airlines in which the Bankrupt is
7 involved. I would appreciate these
8 papers starting from January 1, 1973.

9 "B- Any and all written docu-
10 ments including informal memoranda and
11 diary entries relative to the Trustee's
12 relationship with or communication with
13 any representative of Alltrans Inc.,
14 this is to include such written instru-
15 ments relating to any person or persons
16 who may have discussed with the Trustee
17 the matter of purchase of REA ICC rights
18 even though the persons were not official
19 representatives of Alltrans. All memo-
20 randa and copies of diary entries in the
21 possession of the Trustee or his counsel
22 relative to Alltrans from November 6,
23 1975 to date which are not presently
24 part of the record in the Bankruptcy
25 Court.

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3 "C- All written instruments
4 including informal memoranda in the
5 possession of the Trustee or his counsel
6 relative to the settlement of the claim
7 of Richard Simpson, a past senior Vice
8 President of Marketing of REA Express,
9 Bankrupt and all such writings relative
10 to claims by the Bankrupt against Mr.
11 Simpson and claims of Mr. Simpson against
12 the Bankrupt.

13 "D- All formal or informal
14 memoranda or other writings including
15 diary entries relative to meetings,
16 discussions and arrangements made or
17 discussed between the Trustee and Mr.
18 Tom Kole, past President of the Bankrupt
19 relative to the proposals of Alltrans
20 and REAEMCO to purchase the Bankrupt's
21 ICC operating rights.

22 "In view of the fact that
23 Judge Calgay adjourned the hearing on
24 the Trustee's request for an interim
25 allowance until Monday February 28th at

2:30 p.m. and at the time the adjournment was granted there was agreement between Trustee's counsel, Judge Galgay, and Mr. Fleming of this office that the Trustee and his attorneys would make available to Mr. Fleming any and all records and files in any way relating to the matter before the Court so that Mr. Fleming would be in a position to properly examine the Trustee I would appreciate it if the above requested documents or copies thereof were delivered to my officer prior to 1:00 p.m. on Friday, February 25, 1977.

"Thank you for your courtesy in this regard."

It so happened that I wanted to take advantage of taking a look at the attorney's records as soon as I could. So I made a telephone call to Mr. Wallace.

THE JUDGE: Time sheets?

MR. FLEMING: Whatever they were,

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3 time sheets and backup material. The
4 time sheets themselves don't tell me
5 very much if you want to conduct a
6 real examination.

7 I talked to Mr. Wallace and I
8 told him that I wanted certain infor-
9 mation. I told him also I was sending
10 over a letter with regard to some
11 papers that I wanted from the trustee.

12 After our conversation -- he
13 got that letter that I just read in
14 the record and the result was I got
15 by hand a letter the same day from Mr.
16 Wallace and there is no real sense
17 in reading the whole thing. He can if
18 he wishes to but he says, "Dear Mr.
19 Fleming."

20 THE JUDGE: If you read your
21 letter, we'll read his letter.

22 MR. FLEMING: This is a letter
23 dated February 23, 1977 from Whitman &
24 Ransom by hand to Mr. Fleming.

25 "Re: REA Bankruptcy Proceedings

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"(Applications for allowances
and fees)

"Dear Mr. Fleming:

"I was shocked and surprised by the contrast between our telephone conversation earlier today and the receipt by hand of your letter of today's date. If you can assure me that your request emanates not from the office of Wisehart, Friou & Koch or any of its members and is solely the product of Reilly, Fleming & Reilly, counsel to BRAC, every effort will be made by us to comply with that part of the requests in your letter of February 23 which related to applications for allowances and fees, the subject matter of the Court hearing of February 18, 1977.

"In this connection, I have offered to make available to you at our offices at 9:30 a.m. tomorrow, February 24, our full computer run on the account REA Bankrupt, which

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3 information has been available to you
4 upon request since the hearing on
5 February 13. I attempted to contact
6 you from Washington, D.C. on Tuesday
7 and did not hear from you until today.

8 "In addition to our computer
9 run, I would be pleased to make avail-
10 able to you the original billing
11 records for myself and for Mr. Kahn as
12 examples of how the information gets
13 to the computer for processing. I have
14 further offered to make available to
15 you my personal diary for 1976. You
16 appreciate, of course, that the under-
17 lying time records and my personal diary
18 contain confidential information which
19 is disclosed to you only on a privi-
20 leged basis so that you will be able
21 to state, if requested, that you have
22 seen the underlying documents which
23 support the computer printout.

24 "To the extent that your letter
25 of February 23 deals with materials

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3 that are not the subject of the
4 February 18 hearing on allowances and
5 fees, I do not intend to supply that
6 information to you or to anyone without
7 the specific approval in advance of the
8 Bankruptcy Court.

9 "Very truly yours."

10 We have, after we received the
11 letter, the following day I went over
12 to the office of Whitman & Ransom with
13 Mr. Robert Devlin.

14 I took him because I felt that
15 he was the one person who would know
16 more than anyone else connected with
17 me of where I should be looking for what
18 I should be looking for, which is
19 those items which in any way, in any
20 way would have a bearing on the amount
21 of fees and the right to fees by either
22 the trustee or the attorney for the
23 trustee, in view of all of the actions
24 and hearings and problems that have
25 been going on, that he is more familiar

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3 with than I am.

4 We were given this computer
5 runout which really doesn't tell you too
6 much.

7 THE JUDGE: But it did deal
8 with the hours and the kind of services
9 that were performed?

10 MR. FLEMING: Generally, in a
11 codification fashion where you have to
12 know what different initials stood for.
13 You have to be educated really to
14 understand it.

15 However, it was the runoff
16 which was on file here.

17 Now I can understand the diary,
18 I can understand something written,
19 some prose, even little notes here and
20 there.

21 So I asked for Mr. Wallaces's
22 diary. He was good enough to offer it
23 to me with certain restrictions.
24 Restrictions were placed on it by Mr.
25 Oppenheim, at Mr. Wallaces's directions,

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I believe, that he was making it available to me only if I were alone in the room with him and that meant that Mr. Devlin would have to go elsewhere.

Neither I or Mr. Devlin had any objection to that.

After lunch the diary was brought into a separate room. Mr. Oppenheim went in there.

I read the first page and I had to skip to the second page and, of course, it's a red bound diary.

THE JUDGE: Did the whole thing deal with just REA activity or a variety of other clients?

MR. FLEMING: No, his regular calendar.

THE JUDGE: Well, I can understand his apprehension.

MR. FLEMING: Certainly.

When I got to the second page, Mr. Oppenheim said, "I hope you understand," or, "I trust you understand the

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3 restrictions or the conditions under
4 which you are seeing this."

5 I said, "Wait a minute, let's
6 go through it again."

7 He said, "The information you
8 derive here," to the best of my
9 recollection, I am not -- I am para-
10 phrasing you, not giving direct quotes,
11 but the idea is the information I
12 would get or cull from this would be
13 confidential and there was some wordy
14 restrictions which I didn't quite
15 understand.

16 He said, "Why don't you speak
17 to Mr. Wallace about it, I can get him
18 on the telephone."

19 I said, "I had better do that."

20 I spoke to Don Wallace and he
21 told me his restrictions.

22 To me they sounded as though
23 they could have been interpreted to him,
24 that if what I read gave me an idea or
25 information which was confidential in

any way, that I could not use that idea to form the basis of a question to Mr. Sowerwine or anyone else.

I said, "Are you telling me that this is something I can read and that what I learn I cannot use for the basis of interrogation, this is just for backup, to show how fruitful everything is, how honest he is?"

I said, "With that restriction I don't want to look at your diary."

After lunch I told Mr. Oppenheim I chose not to get involved in that because unless Mr. Oppenheim, as I asked him to do, he was unable to, prepare a draft or prepare a memorandum of what we said over the telephone as to what our understanding was, that we both would agree to, because he was listening on the extension, that was a three-way party extension.

I said, "Bring down a memorandum as to what we agreed to, what's the

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conditions under which I am reading
this diary?"

He said he couldn't do that
unless he talked to Mr. Wallace the
next day.

I said, "Under that condition
I am not going to read the diary because
there may be different impressions as
to what I can do and what I cannot do
as information I may gain from reading
the diary. I don't want any argument
as to -- or any basis of possibility of
there being any sort of charges, right-
fully or wrongfully on either side, that
any one of us did anything we shouldn't
have done."

So I thought it safer and judi-
cious not to look at the diary, which
I didn't do. The time sheets didn't
tell us very much.

I asked Mr. Oppenheim to get us
all of the records dealing with rail-
roads and airlines. I'd like to know

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3 the total number of hours they spent
4 on railroad and airline matters.

5 I'd like to know all the people,
6 all the correspondence they had with
7 regard to discussions as to Alltrans'
8 proposal. That hasn't been supplied.

9 I don't know, I guess it would
10 take weeks maybe to get it out, they
11 weren't sure if they can get it out.

12 THE JUDGE: Why would the
13 Alltrans proposal be of interest to
14 you?

15 If they are reporting profit-
16 able time spent in pursuing the hear-
17 ings before me, the preparation for
18 those hearings, I assume that those are
19 hours that they can well credit them-
20 selves with in that they did spend it
21 on behalf of the trustee pursuing that.

22 I assume also they could report
23 hours that they spent revising the
24 REAMECO proposal if they were opposed
25 to it.

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3 I understand what you are --
4 your search was really to prepare your-
5 self for questions of the trustee about
6 how he justifies the number of hours in
7 his request for an allowance and for
8 his counsel's request for an allowance,
9 an interim allowance.

10 Was that your aim?

11 MR. FLEMING: That was not
12 alone my aim, no.

13 After having discussions --
14 after having been present in court on
15 the 18th and having heard all the dis-
16 cussions with regard to the question of
17 conflict of interest, all the questions
18 which have not yet been determined and
19 which are causing a great amount of
20 scuttlebutt among a lot of people, I
21 thought perhaps, that coming to my
22 mind and Mr. Devlin himself feeling that
23 certain things should be looked into
24 more fully, it became the union's posi-
25 tion and I think they were reasonable

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3 in saying this to me --

4 THE JUDGE: But this is not a
5 hearing on conflict of interest or
6 disqualification. This is a hearing on
7 an application for interim allowances.

8 MR. FLEMING: I realize that
9 but, your Honor, if -- let's propose
10 this. If a trustee -- and I am not
11 saying this is the fact -- but if a
12 trustee, in some other matter, let's
13 say, did have a conflict of interest
14 and because of that conflict of inter-
15 est it was reasonable to assume he
16 spent certain hours doing certain things
17 which he wouldn't have done had he not
18 had the conflict of interest, would he
19 not be unable to charge for those hours
20 and if his attorneys knew he had that
21 conflict of interest and perhaps maybe
22 they themselves had a conflict of inter-
23 est, would they be appropriate for
24 charging for hours which they used per-
25 haps for the good of other clients of

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3 their's or which inured to their bene-
4 fit?

5 This is something that 8,000,
6 10,000, 12,000 union members want to
7 know.

8 If somebody is going to invite
9 me to ask questions, I am going to ask
10 questions.

11 Maybe you are the man to stop
12 me, but I am going to ask questions.

13 THE JUDGE: If what you are
14 aiming at is to ask Mr. Sowerwine, "Did
15 you spend any of the 2,000 or 3,000
16 hours," whatever number of hours there
17 are, doing this, that or the other
18 thing, which were not related to his
19 administering as a trustee, but per-
20 haps doing something, let's say, for
21 a railroad who was a client of his
22 former partnership or his partnership,
23 pursue it, by all means.

24 But this is not a hearing on
25 any possible conflict of the trustee.

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3 This is a hearing as to whether or not
4 the Court ought to allow or recommend
5 to be allowed certain numbers of dollars
6 that the trustee has asked for as an
7 interim allowance and his co-counsel
8 have asked for as an interim allowance.

9 Now, you are aware -- you are
10 aware now certainly -- that the firm
11 of Wisheart & Friou have brought an
12 action to disqualify the trustee because
13 of a conflict of interest.

14 Counsel for the trustee has
15 brought an action or brought a proceed-
16 ing to test the -- to disqualify
17 Wisheart & Friou because of the position
18 they take which they claim is contrary
19 to what the trustee desires and you are
20 aware that Wisheart and Friou has asked
21 me to disqualify myself because of cer-
22 tain ex-parte practices that they claim
23 disqualify me.

24 You are aware of all of that
25 background.

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MR. FLEMING: I am aware of it,
I am aware of all of it.

THE JUDGE: Those are the sub-
ject of separate proceedings.

MR. KAHN: Excuse me, Mr.
Fleming, I am sorry.

Just for the record, I thought
I heard your Honor state that the firm
of Wisehart, Friou & Koch has brought
a proceeding to have the trustee dis-
qualified and I know of no such pro-
ceeding --

THE JUDGE: I am sorry, they
haven't brought such a proceeding but
the matter has been introduced in other
areas --

MR. KAHN: As a cross-motion
on this disqualification hearing.

THE JUDGE: Where they challenged
the trustee because of possible conflict
of interest.

MR. FRIOU: We did make a motion,
both orally and in writing, to disqualify

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3 and remove the trustee, your Honor.

4 MR. KAHN: Judge McMahon has
5 already held and it's the law in this
6 case that they did not make such a
7 motion.

8 THE JUDGE: We will let the
9 record stand as it is.

10 MR. FRIOU: If Mr. Kahn would
11 avoid the self-serving remarks about
12 the law of the case. We did make a
13 motion in writing to --

14 THE JUDGE: When?

15 MR. FRIOU: On September 29,
16 1976.

17 THE JUDGE: Before whom?

18 MR. FRIOU: Before you, your
19 Honor, and before Judge McMahon. It's
20 in a document entitled, "Opposition of
21 Petitioning Creditors to Trustee's
22 Proposed Findings of Fact."

23 THE JUDGE: Well, if that is the
24 document you rely on, fine.

25 MR. FRIOU: That is one of the

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3 documents, there are others.

4 THE JUDGE: Mr. Friou, we're
5 not going to argue that case now.

6 MR. FRIOU: Very well, your
7 Honor.

8 THE JUDGE: If that's the record
9 you rely on, fine, it's in the record.

10 MR. FRIOU: I want to make it
11 clear to your Honor that there is more
12 to the record than that.

13 THE JUDGE: I am not going to
14 hear any argument on what the record
15 contains right now. I want Mr. Fleming
16 to get on with his examination of the
17 trustee.

18 MR. FRIOU: Your Honor, I am
19 simply answering Mr. Kahn's statement.

20 Thank you, your Honor.

21 THE JUDGE: Now, if you'd like
22 to examine, Mr. Fleming, by all means,
23 do so.

24 EXAMINATION BY MR. FLEMING:

25 Q Can we go back to the very first

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3 time you became knowledgeable of the bankrupt's
4 proceeding and what the source of your knowledge
5 was?

6 MR. KAHN: Excuse me, your
7 Honor.

8 I am going to object to that,
9 only upon the ground that the period
10 of time covered by this application is
11 all that is relevant on this hearing
12 and not a time preceding not only this
13 application but preceding the prior
14 application which has already been
15 ruled on and paid.

16 THE JUDGE: Well, let me ask
17 Mr. Fleming, what are you driving at?

18 MR. FLEMING: What am I driving
19 at? -- I am driving -- I am seeking,
20 I am digging, really, for information
21 which may, if it is adduced, have a
22 bearing on whether or not the trustee
23 properly is seeking interim allowances
24 at this time.

25 In fact -- and I hate the words,

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3 I will live with them for the rest of
4 my life, I guess we all will, conflict
5 of interest -- but if there is, if
6 there is the union and maybe anybody,
7 I suggest, with a claim for \$5 has a
8 right to examine anybody that is
9 involved in this case as to what he is
10 doing to try to get that \$5 for that
11 one man.

12 THE JUDGE: He has filed an
13 application for an interim allowance.
14 If you will confine yourself to any of
15 the items in that interim allowance
16 application that have any bearing on
17 the services performed, feel free to
18 do so.

19 I am not going to allow just
20 a straight fishing expedition or just
21 a straight interrogation of this trustee
22 as to how he first became appointed or
23 anything of that nature.

24 I think that's all a matter of
25 public record.

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3 I was the judge who was present
4 when the Creditors Committee was
5 selected, he was elected as standby
6 trustee.

7 Perhaps you were even in the
8 courtroom that day, I am not sure.

9 MR. FLEMING: I don't think so.

10 THE JUDGE: But there is no
11 relevance to that particular subject
12 right now as to whether or not he
13 ought to be granted an interim allow-
14 ance for his services as trustee.

15 Now, if you will proceed from
16 that point, I will be happy to hear
17 you.

18 BY MR. FLEMING:

19 Q I understand from reading the
20 record you were nominated for trustee by Mr.
21 Kahn; is that correct?

22 MR. KAHN: I object, on pre-
23 cisely the same ground.

24 Mr. Fleming is not confining
25 himself to the events for the period

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3 which is before this Court now on an
4 application.

5 THE JUDGE: Mr. Kahn, I don't
6 want to restrain Mr. Fleming, nor do
7 I want to restrain the union members
8 from finding out as much as they can.

9 But the Lord knows this Court
10 does not have time to review two or
11 three years of history.

12 MR. FLEMING: I will make it
13 short, I don't think it will take me
14 that long.

15 THE JUDGE: I will allow Mr.
16 Sowerwine to state the circumstances
17 under which he was elected as standby
18 trustee, when he took over and then
19 you will pick up from that point on as
20 to what services he performed.

21 A. Well, I was not present at my election
22 as standby trustee so I don't actually know
23 of my own knowledge what went on at that meet-
24 ing. The record is clear on it though and I am
25 told from the record that Mr. Kahn did nominate

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me, if that's what you are interested in.

THE WITNESS: If you want more than that, your Honor, in terms of the background --

THE JUDGE: Why don't you explain to him when you first understood you were even going to be submitted and how it came about.

A. I believe this is on record once already and I don't want to contradict myself. But my recollection is I was called in the evening at home by a partner of Chadbourne, Parke, Whiteside & Wolf, who were counsel to the airlines, as I understand it, in the Chapter XI.

Apparently they had discovered that night that they had to have a standby trustee the next morning. It was later postponed but that was their worry at that point.

One of the partners there had suggested me as standby trustee. I cleared it with my associates at Shearson, Hayden, Stone and indicated that I would be willing to serve as standby trustee.

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3 BY MR. FLEMING:

4 Q Do you know if the Burlington
5 Northern Railroad is a creditor in this matter?

6 A I believe so, yes, I am not sure. I
7 know they're in the other notes, at least.
8 Whether they're in any other claims, I believe
9 they have some other claims as well.

10 Q I asked you were you aware of
11 the fact that Mr. Kahn was the one who nomi-
12 nated you to be trustee in this matter?

13 A No, I was not.

14 Q The record indicates he was and
15 that he voted as a representative of the
16 Burlington Railroad at that time?

17 A I have no idea --

18 THE JUDGE: He said he wasn't
19 there, so that he may have discovered
20 it later.

21 MR. FLEMING: I don't intend
22 to go over --

23 MR. KAHN: I don't want to
24 object, but Mr. Reilly's -- Fleming's
25 conclusions are such a distortion of the

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3 reality, I only would like to say I
4 think the record which your Honor has
5 already referred to speaks for itself.
6 But I couldn't sit by and let quite
7 that big a distortion appear on this
8 record.

9 THE JUDGE: All right, let's go.

10 BY MR. FLEMING:

11 Q Do you know the total amount of
12 claims or alleged claims the bankrupt has
13 against railroads in the United States?

14 A You mean undisputed or including dis-
15 puted claims?

16 Q I am talking about disputed.

17 A The figure depends on the one giving
18 it, I suppose, Mr. Fleming.

19 Q What would you give?

20 A I have no way of evaluating the litiga-
21 tion, if that's what you are talking about.
22 That's being handled by Mr. Wright.

23 There are settlement negotiations
24 that are fairly fair along in one of the cases,
25 the Philadelphia case.

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3 The Travelers case we have lost
4 and it's now being handled on a contingent
5 basis by Wisehart, Friou & Koch.

6 The Knotts case, the brief is
7 due this week, as a matter of fact, tomorrow
8 or on, I believe or rather the jurisdictional
9 statement on the appeal from the three-man
10 court which decided against us in that case.

11 THE JUDGE: The appeal is to
12 the Supreme Court, United States
13 Supreme Court?

14 THE WITNESS: Well, there is
15 still some question as to whether it's
16 an appeal to the Court of Appeals or
17 to the Supreme Court -- no, whether it's
18 an appeal to the Supreme Court or a
19 certiori petition to the Supreme Court,
20 I should put it that way.

21 But I have no way -- I have
22 deliberately tried to but I wouldn't
23 have any basis for evaluating that
24 suit anyway.

25 I am just not that kind of an

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3 antitrust -- the issues are very com-
4 plicated and I am relying completely
5 on Mr. Wright.

6 BY MR. FLEMING:

7 Q I wasn't asking you to evaluate.

8 A You did ask me to evaluate.

9 Q The question I intended to pose
10 and I thought I had posed was do you know or
11 are you aware of the amount claimed by the
12 bankrupt against railroads in different litiga-
13 tions, the total amount at issue?

14 A I think that's a different question.

15 Q All right, use that question
16 then.

17 A The total amount of damages claimed in
18 all the actions, if you mean in the complaint,
19 the figure named would probably run -- I have
20 forgotten now.

21 To tell you the truth -- you
22 have to pay triple damages -- probably some-
23 where around half a billion dollars.

24 Q Half a billion dollars?

25 A Would be my guess, yes.

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Q. You prior to being appointed trustee were an officer in a banking firm which had a great dealing with the railroads involved in these cases, isn't that so?

A. I agree with everything except your characterization of great dealings with the railroads.

Q. Did they have substantial dealings with the railroads?

A. I was not aware of them at the time.

Q. When you became aware of them, did you at one time have a conversation with Mr. Devlin in which you told him you had a conflict of interest and you didn't want to be trustee?

MR. KAHN: I object.

We are right now back to the very evil that your Honor has indicated that he would stop.

Judge McMahon has decided that this issue has never been raised.

Mr. Fleming is devoting his entire questioning to events which took

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3 place prior to an application for
4 allowance which your Honor has approved
5 and which the District Court has
6 approved.

7 THE JUDGE: Mr. Fleming, I am
8 going to sustain Mr. Kahn's objection.

9 The record is filled with all
10 sorts of comments respecting this par-
11 ticular incident.

12 There is an opinion letter from
13 a law firm that deals especially with
14 the question of conflict.

15 There is an opinion letter by
16 Wischard & Friou, all dealing with the
17 relationship of Shearson, Hayden,
18 Stone, Mr. Sowerwine's relationship
19 with that firm and a client called
20 Burlington Northern Railroad or whatever.

21 So that there is no need for
22 you at this point to just add more to
23 that record.

24 I do invite you to concentrate
25 on the hearing that we have today, the

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3 application for interim allowances.

4 Now, you are off at the tangent
5 of conflict again.

6 If you will zero in on the appli-
7 cation for allowances; is Mr. Sowerwine
8 entitled to the application that he's
9 made, is Whitman & Ransom entitled to
10 the application they have made, is
11 Marcus & Angel entitled to it? -- I'd
12 appreciate your help if you can show
13 me what you think are errors in their
14 application or perhaps you might applaud
15 them for what they have done.

16 I don't know what your attitude
17 is but at least get on to the point.

18 MR. FLEMING: I have no posi-
19 tion either way on applauding them or
20 being critical of them. However --

21 THE JUDGE: Well, that is the
22 purpose of this hearing.

23 MR. FLEMING: Well, your Honor,
24 I think you will agree with me that it
25 would be -- it would take five or six

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3 very well trained examiners to look
4 through the records of the law firms if
5 they were to give you all the back-
6 ground information, to see if every
7 day was the proper thing. No one is
8 going to do that.

9 THE JUDGE: I have to pass on it.
10 I have granted applications that are
11 stacked that high (indicating) and the
12 applications run into three and a half
13 million dollars. I have read every
14 application, I have to make a judgment.

15 You as a skilled attorney can
16 make a judgment as to whether or not
17 you think the applications are out-
18 rageous or whether or not you think
19 they're reasonable or maybe they're
20 understated.

21 MR. FLEMING: I didn't read the
22 background on these parties. I am not
23 doubting the hours that the trustee
24 spent. I am in no position to doubt
25 the hours.

REA

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3 How in God's name can you doubt
4 somebody from saying he spent four
5 hours on a certain matter until you
6 saw him at the race track that day
7 and I have never seen Mr. Sowerwine at
8 the race track because I don't get
9 there very often.

10 I will say it's the union's
11 position and I think they have a good
12 point and that's why I am arguing it, at
13 the risk, I see, of getting you annoyed
14 at me.

15 THE JUDGE: You don't have to
16 worry about me getting annoyed at you.
17 There is a higher court to reverse my
18 errors.

19 MR. FLEMING: I just think it's
20 incumbent upon me as interrogator for
21 the union, not just -- at least not to
22 attempt to just pertain myself to the
23 facts and figures and applications but
24 to go beyond it.

25 So long as the doubt is there,

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3 I want to ask him some questions about
4 it.

5 THE JUDGE: Maybe you are in
6 the wrong proceeding. Maybe you should
7 have been in on the applications dis-
8 qualify Wischart and Friou, disqualify
9 me.

10 MR. FLEMING: Nobody invited
11 me in but I was invited in this one by
12 Mr. Kahn; for good or bad, I was and
13 here I am.

14 THE JUDGE: Then you have to
15 stay within the rules of the game.
16 We're dealing with an application for
17 interim allowances.

18 It doesn't make any sense to
19 me to allow you to just drift off on
20 questions of conflict or other areas.

21 Zero in on whether or not the
22 application for interim allowances
23 are reasonable or not.

24 While you are thinking that over
25 I am going to take a five minute recess.

1 REA

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3 Off the record.

4 (Discussion off the record.)

5 THE JUDGE: Mr. Fleming, would
6 you go on with your examination. We
7 are going to recess at 5:00 o'clock. I
8 trust that all inquiry will be ended
9 by then.

10 MR. FLEMING: Well, your Honor,
11 let me say this. That I had intended
12 really today to at least attempt to do
13 some searching inquiry of the trustee
14 - and the attorneys as regards the alleged --
15 and I am somewhat concerned, until some-
16 body straightens me out, I hope someone
17 will some day -- what the interests
18 are of the railroads, of the airlines.

19 The airlines were getting paid
20 all through this thing.

21 Who has any interest which may
22 be contrary to the interests of my
23 clients? If they have interests con-
24 trary or they have done things, which
25 I am not charging they have, I don't

REA

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3 know, but where there is some -- I
4 won't say where there is smoke there
5 is fire but where somebody charges
6 something or talks about it but then I
7 am charged with the knowledge that
8 has been charged, I feel an obligation
9 to try to go into it myself.

10 I intended to ask him -- you
11 will be out of here before 5:00 o'clock.

12 THE JUDGE: If there is a
13 challenge to the trustee's capacity,
14 whether it's by way of conflict or
15 otherwise, there is a provision of the
16 Bankruptcy Act that requires you to
17 bring on an application to remove the
18 trustee.

19 MR. FLEMING: That I understand
20 is being done by the firm. I don't
21 intend to get involved.

22 THE JUDGE: I know of no appli-
23 cation pending in this case to remove
24 the trustee.

25 MR. FLEMING: Well, I thought

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3 that the Friou and Kotch firm had some
4 application along that line.

5 THE JUDGE: There is no entry
6 on any docket before me where a motion
7 or application has been made to remove
8 the trustee.

9 Judge Werker asked the very
10 same question when this matter went
11 up before him.

12 As I recall, Mr. Friou's answer
13 to that question was no, no written
14 motion or application to remove the
15 trustee has been made.

16 That is the state of the record
17 as I understand it.

18 MR. FRIOU: May I comment on
19 this then because I do know more than
20 Mr. Fleming. There is no way that he
21 could know.

22 MR. FLEMING: On that subject.

23 MR. FRIOU: Yes.

24 THE JUDGE: All right, go ahead.

25 MR. FRIOU: Your Honor, I will

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3 be brief but in April of '76
4 I was asked by the Court to give an
5 opinion on conflict of interest --

6 THE JUDGE: Let's not review
7 that. That is already abundantly clear
8 in the record.

9 MR. FRIOU: I am sorry but I
10 have to come down to the record.

11 In June or late May the trustee
12 made a motion to retain counsel for the
13 Court on the conflict of interest
14 question.

15 We opposed that motion with an
16 application to this Court to hold a
17 hearing on notice to all the creditors
18 and resolve the question.

19 THE JUDGE: Isn't that very
20 matter the subject of an appeal now?

21 MR. FRIOU: No, that matter is
22 not the subject of an appeal.

23 Thereafter, your Honor said --

24 THE JUDGE: I don't know how you
25 missed it.

REA

MR. FRIOU: Your Honor said on August 18, on the record, I asked your Honor if you received the opinion letter from that lawyer. It had been submitted to your Honor ex-parte.

We did not know it had been submitted and we were not permitted to see it until I asked for it.

At that time on August 18, 1976 in this courtroom your Honor said, "I have that matter under consideration and I am thinking of writing an opinion on it when I get the time."

Now, your Honor, having said that, I assumed it was before your Honor and not until September 29 did I see your Honor's findings which were prepared by Mr. Kahn's office --

THE JUDGE: Now, just a minute, Mr. Friou, just a minute.

If I submitted findings and conclusions, then there my findings and conclusions. If they were proposed

REA.

findings and conclusions submitted,
that's one thing.

MR. FRIOU: Those findings were
prepared by the counsel for the trustee
and submitted to your Honor. We did
not have --

MR. FLEMING: As proposed
findings.

MR. FRIOU: That's correct.

Your Honor adopted the findings
verbatim on the same day or the morn-
ing after they were submitted because
we did not receive those until late at
night.

We called your Honor's office
in the morning and said we had comments
on them and those comments --

THE JUDGE: Mr. Friou, every
time I give you an opportunity to make
a comment in a very narrow area that
related to Mr. Fleming's comment, you
dredge up history and the record is so
abundantly --

1 REA

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3 MR. FRIOU: Your Honor, there
4 was --

5 THE JUDGE: Mr. Friou, when I
6 am talking you don't talk.

7 MR. FRIOU: I am sorry, your
8 Honor, I apologize to the Court.

9 THE JUDGE: Go on, finish your
10 statement.

11 MR. FRIOU: I respectfully
12 apologize, your Honor.

13 I only had to answer your
14 Honor's statement which has been often
15 made by Mr. Kahn that I --

16 THE JUDGE: Would you just
17 direct your comment to my comment on
18 Judge Werker where Judge Werker asked --

19 MR. FRIOU: Yes, but I -- I
20 beg your pardon.

21 THE JUDGE: Judge Werker asked
22 you whether or not you had ever filed
23 a motion to remove the trustee and your
24 answer was no.

25 MR. FRIOU: No, my answer was

1 REA

2 not no.

3 May I finish, your Honor?

4 THE JUDGE: Yes, with respect --

5 MR. FRIOU: After I said that
6 to Judge Werker and it's in the after-
7 noon which I filed with your Honor on
8 November 1, 1976 in the disqualification
9 proceeding, I spoke on the record for
10 five pages telling Judge Werker what
11 we did do.
12

13 One of the things we did do
14 was respond to the Windels and Marx
15 motion with an application for an order
16 to hold a hearing on notice to creditors.

17 As it happens, that was blunted
18 and that effort was diverted by counsel
19 for the trustee.

20 What we're faced with is a
21 cover-up of the situation that should
22 be aired with a judicial hearing in a
23 fair and impartial manner.

24 With due respect, your Honor,
25 that is impossible in this situation.

REA

THE JUDGE: All right, Mr.

Friou, you have made your statement.

Whatever the state of the record is, that is what the record is. We will have no more discussion on it.

Mr. Kahr don't want to hear from you.

Mr. Fleming, you may interrogate Mr. Sowerwine.

MR. FLEMING: Your Honor, as I was going to say before we got into more -- along the same lines of this conflict of interest business, which I am not going to pursue because I think I pursued it far enough that I have been advised by the Court not to do so. I think I should not do so.

THE JUDGE: I told you this is a hearing on interim allowances, it is not a hearing on any possible conflict of interest on the part of the trustee.

MR. FLEMING: Your Honor, I just

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want your Honor to understand that I felt that at this time, if this would be my application to do this where I was invited to examine fully, that if I had some possible area of conflict that I should know about, that I should attempt to try to find out about it at this hearing.

Now, I realize that your Honor has limited me in this and I am not taking exception to it, although I don't agree with it completely; I think I should have a little more spread and room, without bringing on separate proceedings.

I will tell the Court this, that I intended to examine Mr. -- I know he is not feeling very well, I intend to examine him about his relationships to counsel, to the Creditors Committee, how he chose his own counsel, how he became trustee; his relationships with the railroads, his relationships with

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3 Tom Kole, if any, what bearing any
4 remarks of Kole or his friends may have
5 had upon his thinking, whether he knew
6 Kole or had any information that Kole
7 was being offered a vice presidency
8 with Acme Freight; all of these type
9 of things which I am told were areas
10 I should have gone into.

11 Now, I am not going to go into
12 them because the Court does not wish
13 me to and I think the witness is not
14 feeling very well.

15 THE JUDGE: The Court has said
16 that this is a hearing on interim
17 allowances.

18 All of that area is not rele-
19 vant to whether or not the applications
20 that have been filed for services per-
21 formed are reasonable, unreasonable or
22 other wise.

23 MR. FLEMING: Based on that,
24 let me say this. That if I were to
25 attempt to examine not time records

REA

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3 alone, which are really a summary, but
4 the underlying documents behind all
5 these time records, I had been spending
6 perhaps enough time of men in examining
7 those records, which were offered to
8 me, for which I am grateful and I think
9 the offer was sincere, it would prob-
10 ably run the union in dues money
11 possibly a hundred thousand to examine
12 all these records.

13 I don't propose to put the
14 union through that kind of expense.

15 I therefore will terminate my
16 examination of Mr. Sowerwine. I
17 apologize if I kept him too long, if
18 he is not feeling too well.

19 I find no reason at this point
20 to examine the attorneys because I
21 could not conduct a meaningful exami-
22 nation without having gone into a very
23 extensive examination of all their
24 records.

25 I say I do not mean --

REA

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3 THE JUDGE: Were they made avail-
4 able to you?

5 MR. FLEMING: No, they were
6 not made available to us. They were
7 going to but the backup on certain
8 things Mr. Oppenheim would have had a
9 devil of a time trying to find it, I
10 understand, so we couldn't get them
11 in time.

12 However, I am not going to spend
13 the time nor would I ask the client or
14 even encourage the client to spend all
15 that money to go into all those things.

16 I want to say for the record,
17 I have no personal knowledge or personal
18 suspicions that there is anything wrong
19 with their records.

20 I don't want it to appear that
21 I am telling you that there is some-
22 thing wrong here but I can't find it.

23 I am telling you that you --
24 one could think that there is something
25 wrong here and if it was, I would like

REA

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3 to have found it.

4 Withthat, I will stop my
5 interrogation and I won't bother the
6 attorneys either.

7 MR. KAHN: May I ask Mr. Fleming
8 to please state for the record who he
9 represents and how long he's repre-
10 sented them, at least commencing with
11 February 18 and I have nothing further.

12 MR. FLEMING: How long have I
13 represented them?

14 MR. KAHN: The first question is
15 who do you represent?

16 MR. FLEMING: I represent the
17 union, the International Brotherhood of
18 Railway Clerks.

19 MR. KAHN: Have you represented
20 that union since at least February 18,
21 1975?

22 MR. FLEMING: I represent them
23 on special matters where they call
24 upon me. I am not general counsel nor
25 am I local counsel.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In the Matter	Bankruptcy Nos.
-of-	
REA HOLDING CORPORATION,	75 B 251
THE EXPRESS COMPANY, INC.,	75 B 252
REA EXPRESS, INC., f/k/a	
Railway Express Agency, Inc.,	75 B 253
REXCO SUPPLY CORPORATION,	75 B 254
Bankrupts.	

CERTIFICATE ON APPLICATION FOR INTERIM
AND FINAL ALLOWANCES PURSUANT TO RULE
16(c) OF THE BANKRUPTCY RULES, AS AMENDED.
S.D.N.Y.

TO THE JUDGES OF THE UNITED STATES DISTRICT COURT, SOUTHERN
DISTRICT OF NEW YORK:

I, JOHN J. GALGAY, Bankruptcy Judge, make my report as follows:

This is a certification on application for both interim and final allowances pursuant to Rule 16(c) of the Bankruptcy Rules of this Court, as amended. The certification involves all of the above bankrupts. This certification deals in part with applications for interim compensation by the Trustee, one of his special counsel, and his general co-counsel. Under ordinary circumstances involving more modest estates a Trustee's final report is generally required and, simultaneously, applications are filed seeking final compensation by the Trustee and all the various professionals retained by him pursuant to Court order. Interim compensation has usually been considered to be an exception granted only where justice and the special exigencies of an individual matter so requires. Interim allowances, however, have been granted in the past in special cases and there is clear precedent for granting such allowances. In my judgment, the above captioned cases clearly come within the exceptions. See In the Matter of Franklin New York Corporation, 74 B 1423 Memorandum opinion by J. Bricant U.S.D.J., July 16, 1976.

This certification also includes recommendations for final compensation for two law firms who acted as special counsel to the

Trustee in connection with certain litigation which has now been concluded by a favorable settlement previously approved by this Court. The objectives which were the purpose of their retention have been achieved and no reason appears why their compensation for services rendered to the Trustee in connection therewith should be delayed when it clearly appears that the assets presently in the hands of the Trustee are more than adequate to pay all the Trustee's administrative expenses as well as a substantial dividend on all Chapter XI administration claims.

The bankrupts are all Delaware corporations whose principal places of business were in New York. REA Express, Inc. which owned the vast bulk of assets administered by the Trustee and against which the vast bulk of claims have been filed, was an operating company engaged in the business of surface and air express shipments throughout the United States. Rexco Supply Corporation was a company engaged in the purchasing and maintenance of equipment for REA Express and was a wholly-owned subsidiary of REA Express, Inc. The Express Company, Inc. was a company engaged in international freight forwarding. REA Holding Corporation was a holding company which owned the stock of REA Express, Inc. and The Express Company, Inc.

On February 18, 1975, the above named bankrupts filed petitions for arrangement under Chapter XI of the Bankruptcy Act and on that date I signed an order permitting the bankrupts to continue business as Debtors-in-Possession.

On November 6, 1975, orders were entered by this Court adjudicating the companies bankrupts. On November 7, 1975, C. Orvis Sowerwine duly qualified as Trustee by filing his bonds. By order dated November 7, 1975, I approved those bonds.

Since the adjudication of the former debtors as bankrupts, ⁸⁵ the Trustee, with the assistance of his co-counsel, special counsel, and accountants, has liquidated more than 95% of the assets of the bankrupt estates. The Trustee now has in his possession cash of almost 8 million dollars. Additional monies will be received as the remaining assets are liquidated. There remains a huge amount of work to be performed before a final meeting of creditors may be called. The potential aggregate recovery to creditors cannot yet be fully estimated. Much has depended upon and will continue to depend upon the diligence and skills exercised by the Trustee and his counsel. Substantial litigation involving the bankrupt is being conducted in various courts, and the final outcome of such litigation will substantially affect the ultimate outcome of these proceedings as will the final determinations in pending proceedings before administrative agencies such as the Interstate Commerce Commission.

In protracted, complicated cases such as these, it seems to me that it is an injustice to the Court-appointed professionals (attorneys, accountants, trustees), to expect them to perform high quality services, often under great time pressures, involving extremely complex factual and legal issues while compelling them to wait many years before receiving any compensation for their services. Practicing law in the competitive atmosphere of New York City is a sufficient challenge without requiring such professionals to be bankers as well. In the instant case, a large amount of assets have been marshalled through the efforts of the various applicants. Unless substantial further professional time is invested, other potential assets may, and probably will, be lost.

In summary, I believe that, in large protracted cases involving

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an extraordinary expenditure of time by sophisticated professionals and expeditious solutions to extremely complex problems, an exception to the general rule is warranted. I, therefore, have reached the conclusion that final allowances should be allowed as recommended. Interim allowances should be allowed as recommended below.

Consistent with the foregoing principles, I have entertained the applications of the Trustee, general co-counsel and special counsel. Notice was given to all creditors of the date of hearing on such applications. Hearings were held before me on February 18, 1977 and adjourned to February 28, 1977. One written objection to allowances was filed with the Court. The record of these two hearings establishes to my satisfaction that no valid objection was raised as to the applications for interim allowances. The record, including the thorough and detailed applications and the transcript of the two days of hearings, contains a full exposition of the services performed by the applicants as well as the reasons why the applicants believed that the requested interim allowances were necessary and proper at this time. I am satisfied that all criteria for payment of these interim allowance requests have been met in full without any valid objections having been presented to the Court at either hearing.

C. Orvis Sowerwine, Trustee

C. Orvis Sowerwine is Trustee for the four bankrupts. From the time he qualified as Trustee on November 7, 1975 to the date of his application for an interim allowance, in excess of Twenty-Nine Million Five Hundred Thousand Dollars (\$29,500,000) has passed through his hands as Trustee. Based on this figure, he would be entitled to commissions in excess of Five Hundred Ninety Thousand Dollars (\$590,000). Having previously received an interim allowance of \$50,000, at this time, has requested an additional interim

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allowance of \$50,000. Because of his extremely diligent and conscientious attention to every detail in the administration of these bankrupts and because of the actions taken on his own initiative, for example the active development of Rexco operation which produced a cash profit for the estate of over \$900,000 from November 1, 1975 to November 1976 and his development of a salable asset out of the hodgepodge of the bankrupts' operating rights which could be sold, I believe it only fair that Mr. Sowerwine receive, at this time, the full amount of his request for interim compensation. Mr. Sowerwine testified at the hearing on his first application for interim allowances that since he had assumed the Trusteeship, he had been utilizing savings to live. Mr. Sowerwine testified at the hearing on February 18, that he had been serving his employer, Shearson Hayden Stone, Inc., without compensation and had been on a leave of absence subsequent to May 14, 1976. Therefore, I recommend that Mr. Sowerwine, at this time, receive the sum of \$50,000 as an additional interim allowance at this time plus out-of-pocket disbursements of \$291.02.

Robert L. Wright, Esq., Special Counsel

Robert L. Wright, Esq. was authorized by order of this Court dated April 6, 1976 to act as special counsel to the Trustee in relation to the continued prosecution by the Trustee of certain major anti-trust litigation, which order was supplemented by this Court's order of February 7, 1977. Specifically, Mr. Wright was employed to represent the Trustee and the bankrupt estate, REA Express, Inc., in connection with the prosecution of a petition to review and set aside the order of the Interstate Commerce Commission which approved the issuance by the bankrupt in 1959 of certain notes to various railroads. Mr. Wright has prepared and filed a petition on behalf of the Trustee to The United States Supreme Court for a writ of certiorari and jurisdictional statement on this matter. Mr. Wright was previously allowed interim compensation of \$7,500 for his efforts. He now seeks additional compensation in

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the amount of \$14,250. No objection was made to his application. Under all the circumstances, I recommend that, at this time, Robert L. Wright, Esq. be allowed an interim allowance of \$14,250 and out-of-pocket expenses in the amount of \$330.00.

Wisehart, Friou & Koch and Wolf, Block, Schorr & Solis-Cohen,
Special Counsel

The next applications are made by the law firms of Wisehart, Friou & Koch and Wolf, Block, Schorr & Solis-Cohen, joint special counsel to the Trustee. These firms were authorized by order of this Court to act as special counsel to the Trustee in relation to certain litigation entitled R.E.A. Express, Inc. v. Interway Corporation et al. ("Interway"). The Trustee asserted that the defendant, Interway, violated Section 10(b) of the Securities Exchange Act of 1934. Following a partial reversal of an adverse decision after trial in the District Court by the Court of Appeals, a settlement, subject to this Court's approval, was entered into before the District Court. This tentative settlement was approved after a hearing on notice to creditors held before this Court on February 18, 1977. Pursuant to the settlement, the bankrupt estate will receive a gross of \$300,000 less an offset in the sum of \$150,000 in favor of the defendant Interway, or a net amount of \$150,000. Special Counsel, Wolf, Block, Schorr & Solis-Cohen, has requested a fee of \$85,000 on account of the services which it rendered to the Trustee in connection with this proceeding. Special counsel Wisehart, Friou & Koch has similarly requested a fee of \$15,000. The services of both special counsel were on a contingent basis. In view of the benefit to the bankrupt estates which resulted from the efforts of special counsel, I recommend that special counsel, Wolf, Block, Schorr & Solis-Cohen, receive as a final allowance the sum of \$85,000 plus its out-of-pocket expenses of \$3,500.83. I further recommend that special counsel, Wisehart, Friou, & Koch, receive as a final allowance in this matter the sum

of \$15,000.

Whitman & Ransom and Marcus & Angel, General Co-counsel of the Trustee

The firms of Marcus & Angel and Whitman & Ransom have acted as co-counsel to the Trustee from the date of the bankrupts' adjudication on November 6, 1975 to the present date. Previously, the two firms acted as co-counsel to the Official Creditors' Committee of the Debtors-in-Possession from February 18, 1975 to November 6, 1975. Applicants have received no compensation for the services which they rendered as co-counsel to the Official Creditors' Committee and, thereafter, to the Trustee, despite the fact that they have rendered an inordinate amount of services, including nights and weekends, often performed under short deadlines involving factual and legal issues, the magnitude of which has seldom been seen by this Court. Such services have been rendered on a continuing basis for a period of more than two years.

At this time, these applicants seek a joint allowance for interim compensation for services rendered to the Trustee since November 6, 1975, the date of the bankruptcy adjudication, to December 31, 1976. These applicants do not seek, at this time any allowance for the services which they rendered to the Official Creditors' Committee. Based upon the total hours expended by these firms, - in excess of 12,000 hours, - the applicants' total time charges for the period November 6, 1975 to December 31, 1976 are One Million Fifty-Five Thousand Two Hundred Fifteen Dollars (1,055,215). These two firms request a joint interim allowance of only 75% of their aggregate time charges of Seven Hundred Ninety-One Thousand Four Hundred Eleven Dollars and Twenty-Five Cents (791,411.25). The services which applicants have rendered to the Trustee in these proceedings have been in connection with very complex and difficult legal matters which have involved expertise

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in the fields of corporate litigation and Interstate Commerce Commission proceedings, to name just two specific areas, in addition to their skills as bankruptcy practitioners. Their reputation as specialists in the field is high and their reputation and performance before me in the bankruptcy has been of high quality and of substantial benefit to the estates of the bankrupts. They have attended to the successful sale of nearly all of the bankrupts' tangible assets, including its real property and its equipment. They have already collected a very high percentage of the bankrupts' accounts receivable. They have attended to the sale of the bankrupts' operating authorities and are currently prosecuting an appeal to the Court of Appeals for the Second Circuit, seeking to overturn a decision of the Interstate Commerce Commission which would prevent the successful sale of the bankrupts' operating authorities, previously approved by this Court. Largely as a result of applicants' efforts, the bankrupt estate currently has on deposit nearly 8 million dollars of net receipts resulting from the liquidation of various assets of the bankrupts. Moreover, approximately an additional \$4,600,000 was collected by them and paid out by the Trustee for the payroll of former employees which remained unpaid by the Debtors-in-Possession on the date of the adjudication in bankruptcy.

An affidavit in opposition to the requested interim allowance was submitted to this Court by counsel for the Brotherhood of Railway & Airline Clerks (BRAC). Counsel for BRAC appeared at the hearings on the application which were held on February 18 and he requested an adjournment to February 28, 1977 for the specific purpose of permitting counsel for BRAC to prepare for proper examination of the Trustee and his co-counsel. This request was granted. As a result of these two hearings, I am persuaded that the objections to the requested interim joint allowance are without merit. The only questions posed to the Trustee on the adjourned date related to matters other than his services and counsel for

BRAC declined to examine any members of the Trustee's co-counsel. 91

Counsel for objectant BRAC stated that he had no reason to believe that the hours claimed to have been expended by co-counsel were inaccurate. Members of both firms testified fully as to their services and volunteered to answer all questions and produce all records.

The co-counsel applicants request 75% of \$1,055,215 for the period of November 6, 1975 through December 31, 1976 representing approximately 12000 hours. Some part of the 12000 hours, approximately 1000 hours, has been spent on matters involving proceedings to disqualify certain special counsel and cross motions to disqualify the Court and challenges made concerning the trustee. I have eliminated that 1000 hours from consideration of this application. Those matters have not been concluded and I must later evaluate what if any contributions to assets or the preservation thereof such professional service was worth. By reducing the hours to 11000 the application is reduced from \$791,411.25 (75%) to approximately \$682,500 using the same mixed hourly rate.

After examining in great detail the comprehensive, joint application for allowances for services rendered and disbursements incurred submitted by the firms of Whitman & Ransom and Marcus & Angel and considering their beneficial services performed to date and the results achieved, I recommend that they receive a joint interim allowance of \$650,000 plus out-of-pocket expenses to the firm of Whitman & Ransom of \$14,533.97 and Marcus & Angel of \$2,815.08.

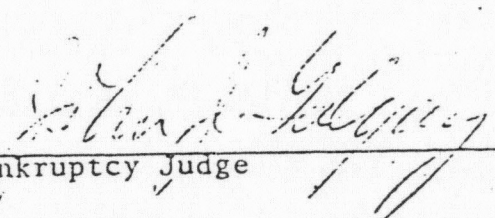
I feel that it is very important that these interim and final fees be paid at this time. In cases of the size and complexity of these cases which continue to be unusually protracted, it is important to be able to attract trustees, attorneys and accountants such as these of high calibre. If payment of all fees is suspended until a final report, it will be years before any such payments are made. Here, more than two years of valuable legal

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services have been rendered to the bankrupt estates. In essence, the interim applications request 75% of 1976 services and no request, at this time, for 1975 services. To allow this situation to continue would certainly discourage qualified professionals from becoming involved in large and complex bankruptcy proceedings. Therefore, I believe that an indication ought to be given to all the applicants in these proceedings that it would be appropriate at reasonable intervals, perhaps as often as every six months or at least annually, that applications for interim allowances be entertained by this Court and recommended to the District Court in accordance with Local Rules.

THE FOREGOING CERTIFICATE IS RESPECTFULLY SUBMITTED.

Dated: New York, New York
March 15, 1977


Bankruptcy Judge

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To be placed on the Miscellaneous Motion Calendar in the United States District Court for the Southern District of New York, for hearing on Tuesday, March 22, 1977 at 10:30 A.M., Room 506, U.S. Courthouse, Foley Square, New York, New York 10007

NOTICE BY MAIL GIVEN TO:

C. Orvis Sowerwine,
Trustee
REA Building
150 East 42nd St.
New York, New York

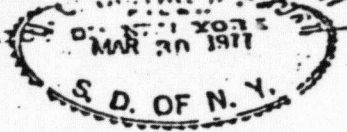
Robert L. Wright, Esq.
Special Counsel
1750 New York Ave. N.W.
210 United Unions Bldg.
Washington, D.C. 20006

Wisehart, Friou & Koch & Wolf,
Block, Schorr & Solis-Cohen
Special Counsel
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UNITED STATES DISTRICT COURT - SOUTHERN DISTRICT OF NEW YORK



In the Matter of:

Docket Number 75 B 251-254

REA Holding Corporation,
The Express Company, Inc.,
REA Express, Inc., f/k/a
Railway Express Agency, Inc.,
Rexco Supply Corporation

Hon. CHARLES M. METZNER, U.S.

The Papers checked hereunder and read on this motion on March 22,
room 506.

Calendar No. _____

Notice of Motion and Affidavits annexed _____

Order to Show Cause and Affidavits annexed _____

Answering Affidavits _____

Replying Affidavits _____

Notice of Examination and Pleadings _____

Referee's Report on Allowance _____ X

Special Master's Report _____

Commissioner's Report _____

No one appearing in opposition and _____

Upon the foregoing papers the report is approved except that the
joint application of counsel allowed in the sum of \$682,500 is
reduced to \$455,000. The recommendation allowed 75 per cent
of the total billable time as an interim allowance. I have
never allowed more than 50 per cent for such an allowance.

~~XXXXXXXXXX~~

SO ORDERED

Charles M. Metzner
U. S. D. J.

Dated March 28, 1977

95

R E A EXPRESS INC.

75 B 253 JJG

DOCKET NUMBER

11

	DATE	PROCEEDINGS
367)	2/7/77	OSC signed (2/4) re: why an order should not be entered authorizing trustee to sell his right, title and interest etc. Ret: 2/28/77 at 10:00
	2/7/77	Filed exhibits by Robert E. Friou re: ex-Parte practice. on disqualification of Wisehart, Friou & Koch. (attached to mtn dated 12/15/77)
368)	2/8/77	Filed so ordered memorandum re: that the bankrupt's claim for refund is satisfied, and the claimant's claim(Georgia Motor Fuel Tax Law is also satisfied.
	2/8/77	Filed unconditional transfer of claim after proof filed.
	2/9/77	Filed letter on behalf of Douglas Dunhill, Inc. withdrawing all claims.
	2/9/77	Filed letter on behalf of Richard C. Kraus, Route Number Two, Box Number 2156, Grayling, Michigan 49738, withdrawing his claim filed on July 28, 1975.
	2/9/77	Filed letter on behalf of Eastman Kodak Co., withdrawing certain claim.
	2/9/77	Filed application by Robert L. Wright re: recommended interim report.
business: 369)	2/9/77	Order signed (2/8) amending order dated 4/6/75 re: compensation of Robert L. Wright. etc.
trustee Ret 2/8 370)	2/10/77	Order signed authorizing the Clerk of the Court to transfer to the trustee all proofs of claim filed etc.
of N/M 71)	2/10/77	Filed letter by A.M. Taylor re: filing of claim. Memo Endorsed Permit Claim to be docketed as timely filed.
ions of e of the at 10:30	2/14/77	Filed minutes re: hearing of 2/4/77
	2/14/77	Filed application for interim allowance by trustee.
	2/14/77	Filed answer by attys for trustee re: S/C dated 1/18/77 Ret: 2/15/77 at 10:00
	2/15/77	Filed memorandum by attys for Wisehart Friou & Koch re: in opposition to OSC to dismiss dated 10/28/76 Sine Die. (2/18 ?)
le statement fo	2/15/77	Filed N/M by Wisehart, Friou & Koch with affidavit of service and affidavit in support to mtn to disqualify JJG etc.
	2/15/77	Filed amendment to Cross- Motion to disqualify John J. Galgay etc. filed 2/15/77

FORM BK 74-E
SEPT. 1962

UNITED STATES DISTRICT COURT

BANKRUPTCY DOCKET-CONTINUATION

BEST COPY AVAILABLE

75 B 253 JJG

DOCKET NUMBER

REA EXPRESS

PROCEEDINGS

DATE	
377)	2/25/77 Order signed authorizing trustee to effect a transfer of his right , title and interest in Pa. and approving such sale. etc.
378)	2/25/77 Order signed authorizing trustee to effect a transfer of right, title and interest in Norristown, Pa. and approving such sale. etc.
379)	2/25/77 Order signed authorizing trustee to effect a transfer of his right, title and interest in Mississippi and approving such sale. etc..
380)	2/25/77 Order signed authorizing trustee to continue operating the div of Rexco to 4/6/77
381)	2/25/77 Order signed re: extending time for trustee to assume or reject certain executory contracts to 3/29/77
	2/22/77 Adj S/C (Clarence Brown) adj to 3/16/77 at 11:00 Mtn seeking instructions ...Sub Judice.
	2/28/77 Filed minutes re: hearing of <u>2/18/77</u> .
-382)	2/28/77 Filed Bankruptcy Judge John J Galgay's memorandum opinion re: obligations, duties and responsibilities of the attys for the bankrupt on sale of bankrupt's operating authorities.
	2/28/77 Filed memo by JJG's secretary Ralph Chin re: opinion dated 2/28/77 # 382.
383)	3/9/77 Order signed (3/8) authorizing trustee to effect a transfer of the trustee's right, title and interest to the property of the bankrupt located in Harrisburg, Pa. and approving such sale. etc.
	2/28/77 Adj S/C (Penn Central) adj to 3/29/77 at 10:00
	Sale of Harrisburg Properties authorized. Submit Order.
	Adj Hrg on interim allowances . Held & Closed. Sub Judice.
	2/15/77 Adj S/C (Clarence Brown) adj to 2/22/77 at 10:00
	Adj S/C (seeking relief) adj to 3/29/77 at 10:00
	Adj S/C (Commence Land) adj to 3/29/77 at 10:00
	Adj S/C (Transport Pool) adj to 3/29/77 at 10:00
	S/C (Cooperative Farm Chemicals Corp) adj to 3/29/77 at 10:00

75 B 253 JJG

DOCKET NUMBER

REA EXPRESS

DATE	PROCEEDINGS
390)	3/30/77 Order signed (3/28) authorizing trustee to operate the business of REXCO to 5/6/77
391)	3/30/77 Order signed (3/28) extending time for trustee to assume or reject certain executory contracts to 4/27/77
3/30/77	Filed designation of the contents of the record on appeal and statements of the issues presented. re: notice of appeal dated 3/21/77
3/30/77	Filed notice by attys for a claimant re: change of adress of attys Bingham, Englar, Jones & Houston J.A. Samuel & Co Inc 14 Wall St. NYC 10005
3/31/77	Filed minutes re: hearing dated 2/28/77
3/31/77	Filed minutes re: hearing dated 2/22/77
3/31/77	Filed minutes re: hearing dated 2/28/77
3/31/77	Filed minutes re: hearing dated 3/21/77
3/29/77	Adj S/C (Coop Farm Chemicals Corp) adj to 4/11/77 at 10:00 Adj S/C (Commerce Land) adj to 4/11/77 at 10:00 Adj S/C (Seeking Relief) adj to 4/26/77 at 10:00 Adj S/C (Transport Pool) adj to 4/26/77 at 10:00 Adj S/C (Penn Central) adj to 4/26/77 at 10:00
4/4/77	Filed letter by Robert E. Friou re: disqualification of attys.
4/4/77	Received from the district court copy of order signed by USDJ Metzger re: report on allowances. (approved.)
4/4/77	Filed letter by Robert E. Friou dated 3/23/77 re: hrg on disqualifications.
392)	4/6/77 Stip signed bet. attys for trustee and claimant re: reducing claim of Transport Pool Inc and allowed as an administration claim. etc.
393)	4/8/77 Order signed *(4/6) authorizing trustee to use any members of the firm of Whitman & Ransom and Marcus and Angel to sign his name on written instruments etc.
394)	4/12/77 OSC signed re: why trustee should not be permitted to declare a default in the offer of Mr. Don Promietto to purchase certain property belonging to the bankrupt estates. etc. Ret: 4/26/77 at 11
4/12/77	Filed designation of additional papers to be included in the record on appeal re: appeal dated 3/21/77